IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1201

ZEIGLER COAL COMPANY, *Petitioner,*

v.

LOCAL UNION NO. 1870, UNITED MINE WORKERS OF AMERICA AND LOCAL UNION NO. 8682, UNITED MINE WORKERS OF AMERICA, *Respondents.*

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF THE BITUMINOUS COAL OPERATORS' ASSOCIATION, INC. IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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On Petition For A Writ of Certiorari To The United States Court of Appeals for the Seventh Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The Bituminous Coal Operators' Association, Inc. ("BCOA"), by its undersigned counsel, having received consent from Petitioner, but not from the Respondents, moves pursuant to Rule 42 of the Supreme Court Rules that the Court grant it leave to file the enclosed Brief *Amicus Curiae* in support of the Petition for Writ of Certiorari.

BCOA'S INTEREST AND WHY THE FILING IS DESIRABLE

BCOA is a national association of bituminous coal producers, organized in 1950 and continuing in being until the present time. BCOA has approximately 130 members including the major coal producers in all of the bituminous coal mining states. Its members produce about 75 percent of the coal mined under the National Bituminous Coal Wage Agreement. BCOA negotiates and assists in interpreting this Agreement.

BCOA was organized for the purpose of attempting to help bring stability out of chaos in employer-employee relations in the coal industry. These efforts have been successful to a large degree, but the continued increase in the incidence and magnitude of wildcat strikes in recent years has presented an imminent threat to the production of coal and to the stability of employment in the coal industry.

This case is before the Court on a Petition for a Writ of Certiorari by the Zeigler Coal Company. If the Writ is issued, the Court's decision should establish legal guidelines to determine the application of the recent *Buffalo Forge* decision, 428 U.S. 397, 96 S.Ct. 3141 (1976), to the recurring wildcat strikes in the coal industry. This will have substantial and even crucial impact on the effectiveness and integrity of the agreements between BCOA and the United Mine Workers of America ("UMWA") and on the ability of the bituminous coal industry to meet the Nation's need for coal.

All BCOA members will be affected by the decision of this Court.

WHEREFORE, BCOA moves the Court to allow the filing of the Brief *Amicus Curiae*, which is submitted herein with the requisite number of printed copies.

Respectfully submitted,

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BCOA'S INTEREST

The Bituminous Coal Operators' Association, Inc. herein called "BCOA", is a national association of coal operators, organized in 1950 for the purpose of negotiating and assisting in interpreting BCOA's national agreements with the United Mine Workers of America, herein called "UMWA". BCOA has a membership of approximately 130 companies who operate coal mines in bituminous coal mining states, and who collectively produced approximately 75 percent of the bituminous coal mined under the National Bituminous

Coal Wage Agreement of 1974, herein called the "1974 Agreement".

BCOA was formed against the backdrop of the labor strife in the coal industry during the 1940's, a period characterized by strikes and by Government seizures of the coal mines. BCOA's purpose was to create more stable labor relations and to establish and maintain harmonious relationships between the coal operators and their employees and their employee representative, the UMWA. For a period of time these efforts were successful in that between the early 1950's and the present a succession of national labor agreements have been negotiated between BCOA and UMWA without any seriously prolonged or crippling economic strikes. Escalating wildcat strikes now threaten all this progress. The 1977-78 Agreement has been negotiated subject to membership ratification.

Prior to the current negotiations, the latest contract renewal was the 1974 Agreement, which became effective in December 1974 to run for a three-year period. This 1974 Agreement was hailed as one of the most progressive labor agreements ever negotiated. It provided for wage and benefit levels which were at least as beneficial to the miners as those in any other major industry. It also contained provisions for the handling of grievances and for various types of expedited arbitration over a broad range of issues. All local grievances, disputes, or local trouble of any kind, were subject to final and binding settlement through the grievance-arbitration procedures of the 1974 Agreement. There was no labor agreement of record that contained a broader grievance-arbitration clause. The agreement provided for eventual resolution of major disputes by a national Arbitration Review Board.

Under the 1974 Agreement, grievances at the local mine level which were not settled were assigned in rotation to panel arbitrators. These panel arbitrators were empowered to hear the grievances and to render final and binding decisions. The panel arbitrator's decision was subject to review by a national Arbitration Review Board.

The function of the Arbitration Review Board under the 1974 Agreement was to resolve conflicts in panel arbitrators' decisions, to determine whether a panel arbitrator's decision was arbitrary, capricious, or fraudulent, and to decide questions of contractual interpretations affecting the industry as a whole. There were special expedited procedures for discharge cases and safety disputes.

The provisions for grievance handling and for arbitration were and still are fully functioning. The number of arbitrations has steadily increased since 1974. These procedures were readily available; and they were being used by the vast majority of the coal miners to resolve their grievances.

But, unfortunately, there are a relative few coal miners who from time to time take the law in their own hands to engage in wildcat strikes over a local grievance or dispute. A local strike is periodically escalated into a widespread wildcat strike extending beyond the mine of origin and encompassing all or several UMWA districts. Such escalation is normally brought about by "roving" pickets who fan out over the coal fields and shut down mine after mine in order to mount increasing pressure on the industry to forego arbitration and give in to the grievance. The result of

such coerced resolution bears equally on the unionized industry under the National Agreement.

Despite the forward-looking 1974 Agreement, stability of employment in the coal industry has steadily worsened since that Agreement was signed. There were more wildcat strikes in the bituminous coal industry in 1974 than ever before. The record for 1975 was worse; in 1976, it was worse than in 1975; and 1977 was the worst year yet. The losses in wages, production, and revenue to the Health and Retirement Funds for 1973, 1974, 1975, 1976, and 1977 are astronomical.

The particular work stoppage in West Virginia, which was the genesis of this case, was at a single mine and was over a clearly arbitrable issue—an issue that *was* indeed arbitrated. It caused the shutdown of over one-half of the total production of bituminous coal in the Nation. It inflicted severe losses on coal production, on the coal miner, on the Health and Retirement Funds, on the coal communities, on the coal States, and on the Nation. There have been other widespread wildcat strikes since that time.

In the 1974 Agreement, the mine operators agreed to double their contributions to these Trust Funds (which had also been done in 1971) and to dramatically increase the pensions both for present pensioners and for the future pensions of active miners. The health and medical benefits plans in the bituminous coal industry are among the most liberal in the Nation.

The contributions to these trust funds by employers are based on a combination of tons of production and cents per hour for hours actually worked. Consequently, the financial stability of these funds depends directly on the continuing and uninterrupted

production of coal. This stability has been threatened by the rising level of wildcat strikes to the point where the health trusts for active and retired miners are in a bankrupt position. The Board of Trustees, the Chairman of which is appointed by the UMWA, has from time to time issued statements warning of the serious damage to the miners' Health and Retirement benefits arising from the recurring incidence of wildcats. The two benefit funds were in virtual bankruptcy before the 1974 Agreement expired, and the 1950 Pension Fund was badly hurt. After the strike, they were unable to pay the 1950 pension benefits.

BCOA and its members have a grave and continuing interest in preserving the integrity of the periodic agreements negotiated with the UMWA, in preserving the grievance-arbitration procedures of those agreements, and in maintaining employment stability and production of bituminous coal. BCOA and its members also have a similar direct interest in the stability of the Health and Retirement Funds, to which employers are the sole contributors.

Recurring and escalating wildcat strikes are, to our knowledge, a phenomenon not found in any other industry to any similar degree. But in the coal industry, they are a serious and mounting threat to the nation's economy.

BCOA does not believe in nor advocate the settlement of labor disputes in the courts. BCOA encourages the settlement of disputes by the grievance-arbitration procedures of the agreement. But the courts must perform their traditional role of establishing the parameters of lawful conduct in order that the parties to labor disputes are made aware of their mutual rights and obligations.

Because of its direct and overriding interest in improving labor relations, promoting labor peace, insuring stability of employment, and encouraging respect for the agreement, BCOA files this brief to respectfully bring to the attention of this Court the scope and seriousness of the issues which are before it.

QUESTION PRESENTED

We submit that there is an issue of national import presented here: WHETHER or not a court which concededly can enjoin strikes over arbitrable grievances at their source, can also enjoin strikes at other mines for the purpose of placing pressure on the particular employer, and on the entire BCOA membership, to forego the grievance-arbitration process and to capitulate to the Union's interpretation of the national agreement.

BRIEF STATEMENT OF THE CASE

Petitioner Zeigler Coal Company is a member of BCOA, and a party to the 1974 Agreement.

This agreement contained a very broad grievance-arbitration clause which provided for grievances and binding arbitration of any grievance or "any local trouble of any kind" arising at a mine. It also contained a mutual pledge to "maintain the integrity of the agreement".

Because of a series of wildcat strikes in 1975 at two of Ziegler's mines, a *Boys Markets* injunction was obtained against future picketing over arbitrable disputes, and that injunction was in effect at the time the events here involved transpired.

In July 1976 U.M.W.A. members at a mine of Cedar Coal Company in West Virginia went on strike over a single grievance which was not only arbitrable, but was arbitrated. Roving pickets soon shut down mines employing more than 75,000 miners in the six Eastern coal-producing states in a massive wildcat strike.

The two Zeigler mines in Illinois were among the victims. Zeigler applied for, but was denied, court relief in the U.S. District Court, and that action was sustained by the Seventh Circuit, purportedly on the authority of *Buffalo Forge*, 428 U.S. 397 (1976).

The Wildcat Strike Which Shut Down Zeigler's Mines Fits the Normal Pattern in the Coal Industry

As is usual, the strike at Zeigler's mines did not start at Zeigler, which is located in UMWA District 12 in Illinois, but in District 17 in southern West Virginia. The orginal strike began at one mine of Cedar Coal Company in the summer of 1976. That strike was over an arbitrable issue. Through roving pickets, it fanned out until it shut down more than half of the unionized bituminous coal mines in the industry.

Zeigler sought injunctive relief in the courts for the strike at its mines, but it was denied on the basis of *Buffalo Forge*. The Seventh Circuit agreed with the District Court.

Boys Markets Provides the Basis for Injunctive Relief and *Buffalo Forge* Does Not Prohibit It

We submit that the lower court misinterpreted and misapplied *Buffalo Forge;* and that in the interests of stable labor relations in the coal industry, the Court should grant *certiorari* in this case.

BCOA submits that in this type of case, injunctive relief is clearly appropriate as a legal matter and is essential: (1) to preserve the integrity of the Agreement; (2) to protect the Health and Retirement Funds; (3) to secure an adequate supply of coal; and (4) to prevent chaos in the coal fields. We further submit that injunctive relief is not prohibited by *Buffalo Forge* and is still sanctioned by *Boys Markets,* 398 U.S. 235 (1970).

Boys Markets holds that where there is a labor contract in effect containing a binding grievance and arbitration procedure, there arises an implied agreement not to strike over an arbitrable dispute. In the event such a strike does occur, the federal courts are empowered to enjoin such strikes and to order arbitration of the dispute.

The courts have frequently noted the scope and breadth of the grievance-arbitration clause of the 1974 Agreement. Article XXIII, Section (c) of that Agreement provided for grievance-arbitration of differences arising as to the meaning and application of the provisions of the Agreement; differences arising over matters not specifically mentioned in the Agreement; or "local trouble of any kind". This clause was given a very broad scope by this Court in *Gateway Coal Company* v. *UMWA,* 414 U.S. 368 (1974), which involved an alleged safety issue. The Supreme Court extended *Boys Markets* to an injunction enforcing the implied no-strike clause in the then-existing 1971 National Agreement, although the question of arbitrability of a safety grievance was itself a "substantial question of contract interpretation." 414 U.S. at 380-384. See, footnote 14 in Mr. Justice Stevens' opinion in *Buffalo Forge.*

BCOA submits that *Boys Markets* is applicable here.

There was admittedly an arbitrable dispute at the original Cedar Coal mine; and when other UMWA Local unions such as those at Zeigler Coal were picketed and then ceased work, their actions were plainly designed to frustrate and to undermine the arbitration process. As the Supreme Court said in *Buffalo Forge,* "The driving force behind *Boys Markets* was to implement the strong congressional preference for the private dispute settlement mechanisms agreed upon by the parties." In giving approval to *Boys Markets* in *Buffalo Forge,* the Court stated further that,

> "Striking over an arbitrable dispute would interfere with and frustrate the arbitral process by which the parties had chosen to settle a dispute. The *quid pro quo* for the employer's promise to arbitrate was the union's obligation not to strike over issues that were subject to the arbitration machinery." 96 S.Ct. 3141, 3147 (1976)

It seems quite clear that the force and effect of the action of the Zeigler Coal Company locals was to join hands with the roving pickets in an effort to compel the original employer (Cedar Coal Company) and ultimately the entire unionized industry to capitulate on an arbitrable dispute. Therefore, all locals engaging in and joining this concerted effort breached their implied obligation not to strike over an arbitrable dispute, and were subject to injunction under *Boys Markets.*

In the wake of *Buffalo Forge,* some confusion and uncertainty has been manifested by district judges and by courts of appeals as to its application to wildcat strikes in the coal industry. In addition to the Seventh Circuit decision in this case, see also, *U.S. Steel*

Corp. v. *UMWA Local 6321,* 548 F.2d 67 (3rd Cir. 1976); *Southern Ohio Coal Company* v. *UMWA,* 551 F.2d 695 (6th Cir. 1977). It appears that the lower courts have overreacted to *Buffalo Forge,* which is understandable. We can appreciate the burdens sometimes imposed on the courts by court actions to enjoin these widespread and recurring wildcat strikes. But, when one party refuses to honor an agreement to arbitrate rather than to strike, we know of no way to enforce that agreement except through the courts. No person or group should be above the law.

The Fourth Circuit in the original *Cedar Coal* case showed some understanding of the unique situation in the bituminous coal industry which is dominated by a single union with a national agreement containing wages, benefits, and terms and conditions of employment common to all companies signatory to that agreement, and to all UMWA coal miners. But the Fourth Circuit stopped short of the logic of its own sound reasoning, and refused to enjoin a strike at a mine of another Company, although that strike stemmed directly from the presence of roving pickets. *Cedar Coal Company* v. *UMWA,* 560 F.2d 1154 (1977).

In *Cedar Coal,* the strike began over a grievance that was admittedly arbitrable. The Fourth Circuit held the original strike was enjoinable. The Court also held that the strike by Local 1766 at two other Cedar Coal mines was in furtherance of Local 1759's unlawful objective, and was likewise enjoinable. The Court reasoned thusly:

> "Here, the employer is the same as to both Locals; the collective bargaining agreement is the same; the bargaining unit is the same; the locality of employment is the same; and, most importantly, the purpose of 1766's refusal to cross the 1759 picket lines was not to coerce Cedar into conceding an issue to Local 1759 which was not arbitrable; rather, the purpose of the 1766 strike was to coerce Cedar into conceding an issue to Local 1759 which was admittedly arbitrable. We also bear in mind that under the two-tier arbitration provisions of the collective bargaining agreement, Article XXIII, the award in the 1759 case apparently would affect also Local 1766, for there are only three grounds of appeal to the Arbitration Review Board: that the decision of a panel is in conflict on the same issue with other panels; that the decision involves a new question of a substantial contractual issue; and that the panel decision is arbitrary, etc.
>
> We think, then, that since the purpose of the strike of Local 1766 was to compel Cedar to concede an arbitrable issue to Local 1759, with the same employer, the same collective bargaining agreement, the same bargaining unit, and the cause of Local 1759 made its own, that the *Buffalo Forge* exception to *Boys Markets* should not apply, ..." (Decision, pp. 57-58)

However, the Fourth Circuit in *Cedar Coal* refused to apply the same reasoning to the strike of Local 1949 at Southern Ohio Coal, holding instead that the District Court was correct in denying a preliminary injunction. The reason for the distinction is unclear.

We submit that where all the other bases for injunctive relief are present, it is immaterial whether the employer being picketed and struck in pursuit of a common cause is the same or a different employer.

The critical factors, in our opinion, are the other ones enumerated by the Fourth Circuit in *Cedar Coal.* They are: the same collective bargaining agreement; the same bargaining unit; the purpose of coercing the particular employer and indeed the entire BCOA membership into conceding on an arbitrable issue; and the same impact of the resolution of the particular issue on all BCOA members and all UMWA members.

In short, whether or not the same Company (or as mentioned by the Court, the same locality) is involved, all of the local Unions who went on strike were engaged in a transparent conspiracy and an orchestrated, concerted work stoppage designed to force the industry to capitulate to the Union's interpretation of a specific provision of the 1974 Agreement. Nothing could be more clearly designed to thwart and undermine the arbitration process.

The strikes at the two Zeigler Coal mines were the direct outgrowth and extension of the originating Cedar Coal strike. These strikes were, therefore, in pursuance of the Cedar Coal dispute, and were for the purpose of putting pressure on Cedar Coal and the industry to accede to the Union's demands, and concede an arbitrable issue.

For this reason, *Boys Markets* should govern.

The majority of this Court in *Buffalo Forge* pointed out the features of that case which distinguished it from *Boys Markets.* The Court stated:

> ". . . The District Court found, and it is not now disputed, that the strike was not *over* any dispute between the Union and the employer that was even remotely subject to the arbitration provisions of the contract. The strike at issue was a sympathy strike in support of sister unions negotiating with the employer; neither its causes nor the issue underlying it were subject to the settlement procedures provided by the contract between the employer and respondents. ***The strike had neither the purpose nor the effect of denying or evading an obligation to arbitrate or of depriving the employer of his bargain.***" [emphasis added]

The situation presented here is wholly distinguishable from *Buffalo Forge.* Overriding all else, the essential difference between *Buffalo Forge* and this case is the one emphasized by this Court in the above quotation. In *Buffalo Forge,* the strike had neither the purpose nor effect of evading an obligation to arbitrate nor of depriving the employer of his bargain. In this case, that was the whole purpose of the original strike at Cedar Coal, and the accompanying picketing which spread the strike throughout the coal fields, eventually victimizing Zeigler Coal and hundreds of other operators.

The conclusion seems inescapable that all UMWA locals which went on strike in response to roving pickets were direct participants in a concerted effort to gain by force, rather than by submission to arbitration, their interpretation of the National Agreement. Thus, the purpose and effect of the activities of all those locals was to evade the contractual obligation to arbitrate, and to force their unilateral interpretation on the industry.

Not even superficially can it be said that the Zeigler strike was a "sympathy strike" within the meaning of *Buffalo Forge.* This is not a case where one union with a separate agreement in a separate employee bargain-

ing unit respects the picket lines of another union negotiating for a separate agreement in a separate employee unit. In such a case, there is no arbitrable dispute other than the sympathy strike itself. That was the ruling in *Buffalo Forge*. The union engaging in the sympathy strike had no *direct* interest in the dispute between the striking union and the employer.

Here, all UMWA locals and their members are parties to the same National Agreement, negotiated between BCOA and UMWA "on behalf of its members". They have a direct unity of interest in any underlying dispute involving the meaning and application of any of the terms of their identical agreement. They stand to gain or lose equally from the arbitration of the issue, and to gain or lose equally from resolution of the issue by engaging in a wildcat strike. This is so because interpretation of the 1974 Agreement is a matter in which the members of BCOA and UMWA have an identical and direct interest. The abritrator's ruling at one mine favorable to one grievant can benefit the members at all mines; and an unfavorable ruling can equally be detrimental to them. An enforced settlement by the use of economic force has exactly the same effect.

This situation is thus essentially different from that in *Buffalo Forge* where, as the Court pointed out, there was *no underlying dispute* "that was even remotely subject to arbitration."

Another distinction is that in *Buffalo Forge* the union originally on strike was engaged in a *legal*, primary strike and primary picketing. Here, the original strike at Cedar Coal was *illegal* and in violation of the 1974 Agreement. It would be paradoxical to find that the original strike was an enjoinable one, as the

Fourth Circuit found in *Cedar Coal*, but that the strikes by other locals at other companies in aid of the same unlawful objective are lawful and unenjoinable, as the Seventh Circuit did in this *Zeigler Coal* case.

Finally, BCOA believes that the application of *Buffalo Forge* must be considered in the context of the collective bargaining relationships which exist in the bituminous coal industry.

In *Buffalo Forge* there were two separate locals representing two separate "bargaining units". One was striking to obtain its own separate agreement. The other struck in sympathy. This was a classic "sympathy" strike.

By contrast, all bituminous coal miners employed by members of BCOA are members of a *single multi-employer bargaining unit*. The employers in that bargaining unit are all the members of BCOA. All UMWA miners employed by members of BCOA are covered by a single national agreement containing identical terms and conditions applicable to all of them. The Agreement is a national agreement negotiated between BCOA and the International Union.

The terms of the National Agreement apply alike to all members of UMWA employed by BCOA members; likewise their employers are all mutually bound to respect and to follow the common grievance-arbitration procedures. They also all are bound by Article XXVII, to ". . . maintain the integrity" of the agreement.

Vital to maintaining this "integrity" is the pledge to abide by the grievance-arbitration procedures for settling disputes. As members of the same bargaining unit covered by the same national agreement, each

BCOA member and each UMWA member has an obligation to uphold the agreement and a duty not to engage in lockouts, in strikes, or in picketing over any dispute, no matter at what mine or what Company the dispute arises, so long as that underlying dispute is arbitrable.

If the situation were one in which there was a single plant-wide unit and contract, it would make no sense to say that the employees in Department A who struck over an arbitrable grievance *could be* enjoined under *Boys Markets,* but that the employees in Department B who went out in "sympathy" *could not*. Clearly, in such a situation, the entire strike in a single bargaining unit would be enjoinable under *Boys Markets.*

Conceptually, although on a larger scale, the case just hypothesized is the situation between BCOA and the members of the UMWA under the 1974 Agreement. There is one national contract and one national bargaining unit. The miners at each individual mine of member companies may and do belong to various local unions. They have their own seniority lists and initiate their own grievances. But these locals do not constitute separate bargaining units. Their wages, hours, conditions, benefits, and seniority rights are negotiated between BCOA and UMWA and are derived from the one national agreement. Their grievances are processed under that agreement. Indeed, grievances go in progressive steps from the local to the District level and then to arbitration before panel arbitrators selected by BCOA and UMWA under the National Agreement.

Moreover, in the 1974 Agreement, for the first time, a provision was made for a National Arbitration Review Board which functions as the final arbiter of all disputes. The professed purpose and effect of this National Board was to bring about uniformity in the interpretation and application of the agreement.

Given the existence of a single agreement in a single multi-employer bargaining unit, and an arbitration procedure designed to insure conformity of interpretation, BCOA members and all members of the Union employed by members of BCOA are mutually bound to abide by the common grievance-arbitration procedures. In this unitary relationship, the concepts of "primary" strikes and "sympathy" strikes do not apply. These terms connote separateness of unions, units, and interests which do not exist here. All coal miners have a direct interest in the disputes of all other miners. Because of this close unity of interest among the members of the UMWA and all members of BCOA in the outcome of any contractual dispute, *Buffalo Forge* is clearly inapposite.

The Court below in *Zeigler* appears to agree philosophically with much of this reasoning, but rejects its applicability to the Zeigler strikes. The apparent reason for the Court's opinion was its failure to perceive any nexus between the Cedar Coal originating strike and the Zeigler strike. The Seventh Circuit felt that there was insufficient record support for finding that, by striking, the Zeigler locals were adopting the grievances and goals of the Cedar Coal locals.

We most respectfully submit that this is unrealistic in the extreme. In the real world of the wildcat strike in the coal industry, this phenomenon of spreading strikes by roving pickets has occurred on numerous occasions, and the pattern of conduct has been the same. The wildcat strike is not a mere happening. In the wildcat strike there are no separate classes of "pri-

mary" and "sympathy" strike. The wildcat strike, spread by roving pickets, is an awesome offensive weapon turned against the coal industry to force concessions favorable to the entire UMWA membership on issues that the UMWA has expressly agreed to settle by the grievance-arbitration procedures.

The wildcat strike and the arbitration process are incompatible. They cannot co-exist. The contract must be enforced by the courts or it has no meaning or effectiveness. The nexus between the Cedar Coal strike and the Zeigler strike is obvious and inescapable. To require further proof than exists in this record is to require the impossible. The record evidence is more than ample. What is needed is Court recognition of the transparent realities.

CONCLUSION

The Norris-LaGuardia Act, which was enacted more than 40 years ago, was adopted in response to a growing trend of the courts to enjoin primary strikes on the ground that they were in violation of the Sherman Act as creating a monopoly in restraint of trade. At that point, there was a direct confrontation between management and labor over the basic question of the rights of unions to represent employees and to engage in primary strikes. There was at that time no law or mechanism for certifying unions as collective bargaining representatives of employees or of enforcing, by law, the right of collective bargaining.

But, this was altered by the National Labor Relations Act in 1935, later amended, which gave employees the right to select an exclusive bargaining agent and required employers to recognize and to bargain for agreements with such representatives.

Since that time, employee unions have exercised these rights and thousands of labor agreements are negotiated every year. Among the foremost is the National Bituminous Coal Wage Agreement.

Once this relationship of collective bargaining comes into being, as it has in the coal industry, the appropriate emphasis should be focused on the maintenance of stability of employment under the agreement negotiated between management and labor.

That is truly the issue involved here. The simply stated principle embodied in the National Bituminous Coal Wage Agreement is that *both parties* shall "maintain the integrity of the agreement" during its term, recognizing that at periodic intervals there may be legal strikes over the terms of a new agreement. A part of this mutual obligation during the contract term is the obligation of both parties to use the grievance-arbitration procedures of the agreement to resolve disputes. This leaves no room for strikes or lockouts to force the other party to adopt the aggressor's unilateral interpretation of the agreement.

Otherwise, the concept of an agreed period of labor peace under an agreement for a fixed term becomes an illusion.

For the above reasons, BCOA supports the Petition for a Writ.

Respectfully submitted,

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March 24, 1978